SYNOPSIS OF THE THESIS

CHANGING DIMENSIONS OF EXTRADITION – A STUDY WITH SPECIAL REFERENCE TO LAW, PRACTICE AND EXPERIENCES OF INDIA

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SYNOPSIS

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Ordinarily each State exercises complete jurisdiction over all the persons within its territory. But sometimes there may be cases when a person after committing crime runs away to another country. In such a situation, the country affected finds itself helpless to exercise jurisdiction to punish the guilty person. This situation is undoubtedly very detrimental for peace and order.

Fugitives undermine the world's criminal justice systems. The present day fugitives are techno savvy and highly mobile. They may have been charged with a violation of the law but not been arrested; they may have been released on bail and then fled to avoid prosecution or, perhaps they have escaped from prison. When fugitives flee to escape their charges cases are not adjudicated, convicted criminals fail to meet their liability, and crime victims are denied justice. If fugitives are not pursued by means of an effective legal methodology to locate them and tried or restored to prison a subtle message to others is that -fleeing from the law or failing to comply with the law is somehow acceptable.

The inability of a State to exercise its jurisdiction over fugitives who are within the territory of another state would seriously undermine the maintenance of law and order unless there is a system of state co-operation to overcome the same. The awareness amongst nations about the social necessity of developing inter jurisdictional co-operation is reflected in the existing widespread practice of returning a person who is accused or who has been convicted of a crime to the State in which the crime was committed.[1] In other words the practice of extradition came into vogue.

[1] Edward Collins, *International Law in a Changing World* (1969) , p. 216

Extradition may be briefly described as the surrender of an alleged or convicted criminal by one State to another. More precisely, extradition may be defined as the process by which one State upon the request of another surrenders to the latter a person found within its jurisdiction for trial and punishment or, if he has been already convicted, only for punishment, on account of a crime punishable by the laws of the requesting State and committed outside the territory of the requested State. Needless to say extradition plays an important role in the international battle against crime particularly in the present era in which the crimes and criminals have become a strong organized force with destructive global ramifications.

Extradition is a complex, international process that involves the municipal law, inter-country agreements, international law, courts, requirements of individual governments, interests of individuals etc. In general, extradition is seen as a gesture of goodwill from the country which is holding the suspect towards the country to whom it gives the fugitive criminal to. Most countries are not obliged to give up a suspected criminal to another country's legal system. Since there is no common international law governing extradition, countries have begun set up individualized extradition treaties and arrangements with other countries. There are several factors that come into play regarding the decision to extradite.

Over a period of time the law relating to extradition evolved according to changing times. Taking into consideration the evolving perceptions of international community regarding extradition and the existence of varying legal regimes governing extradition decisions in individual countries, United Nations took steps to design Model Extradition Treaty, 1994 and Model Law of Extradition in 2004 with a hope to bring harmonization of extradition regime.

CHANGING DIMENSIONS OF EXTRADITION LAW

International practice of extradition has today become an institution. Every year, thousands of individuals are handed over from one country to another pursuant to extradition treaties or arrangements for a variety of crimes ranging from petty theft, murders, economic offences, terrorism and drug trafficking to war crimes. In a world in

which many argue that international law is not really law at all,[2] the fact that states are, in at least one area, engaging in constant and daily interactions in compliance with the terms of international treaties of extradition is striking.[3]

The practice of extradition has existed for over three thousand years.[4] During this period, treaties and custom slowly formalized the extradition process and placed limitations on the pursuit of fugitives.[5] Extradition treaties are some of the oldest known examples of international state cooperation through legal agreement. Indeed, the oldest document of diplomatic history, the Peace Treaty between Rameses II of Egypt and the Hittite Prince Hattusili III in 1258 B.C., contains provisions regarding the extradition of criminals.[6] In ancient Greece and Rome, state extradition requests stood in conflict with the sacred right of asylum, but eventually the fear of divine retribution gave way to political considerations.[7]

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[2] Anthony D'Amato, 'Is International Law Really "Law"?,' (1985) 79 NW. U. L. REV. 1293.
[3] William Magnuson, 'The Domestic Politics of International Extradition', (52) Virginia Journal of International Law, p.839.
[4] M. Cherif Bassiouni, *International Extradition and World Public Order*, 572 (1974)
[5] Ivan A. Shearer, *Extradition in International Law* 138 (1971).
[6] The treaty purported to resolve a long-enduring conflict between Egypt and the Hittite kingdom. During the thirteenth century B.C., the Hittite and Egyptian empires fought numerous, savage wars over the control of disputed territory. For example, the famous Battle of Kadesh, the largest chariot battle ever fought, was waged during this time. Weary of the many years of conflict, Rameses and Hattusili finally agreed to a peace treaty, under which the leaders promised to maintain peace between the empires and to lend mutual assistance in case of an attack from another country.
The treaty, a copy of which was found on an inscription on the wall of the Temple of Amun in Egypt, also addressed the issue of criminals who had fled from one empire to the other. The treaty stated that any such criminals would not be sheltered by the receiving king, but rather, would be delivered up to the proper authorities in the country from which they fled. Interestingly, the treaty provided extradited criminals some rights as against their native countries: The treaty stated, with reference to extradited subjects, that "their tongue and their eyes are not to be pulled out; their ears and their feet are not to be cut off; their houses with their wives and their children are not to be destroyed." The treaty also threatened serious sanctions for any party that breached the terms of the agreement. One provision in the treaty stated that "[i]f Rameses and the children of the country of Egypt do not observe this treaty, then the gods and the goddesses of the country of Egypt and the gods and the goddesses of the country of Hatti shall exterminate the descendants of Rameses, the Great King, the king of the country of Egypt." *See J*ames Ivan Anthony Shearer, Extradition in International Law 5 (1971) (citing Franz Von Holtzendorf, 1 Handbuch Des Volkerrechts 169 (1885);
[7] Greek and Roman values concerning hospitality and the protection of guests coincided with a strongly-held belief that the gods favored the granting of asylum. Violations of the right of asylum, it was believed, would be met with the fierce retribution of the gods. Often, asylum was based on an individual's proximity to certain powerful symbols. For example, the Temple of Artemis and the Delian Temple of Apollo offered inviolable refuge to Greek suppliants, and in Rome, standing near statues of the emperors conferred protection on criminals.

Extradition practice in ancient times was overwhelmingly characterized by a focus on political, as opposed to private, crimes.[8] Such offenses included fomenting rebellion, violating the safety of ambassadors, and initiating war.[9] States continued to use extradition primarily as a means for acquiring jurisdiction over political offenders, as opposed to common criminals, well into the eighteenth century. Extradition treaties during this period were rare and often involved the narrow interests of political elites. One of the few examples was the 1661 treaty between Charles II of England and Denmark. Charles II's father, Charles I, had been executed during the English Civil War of the 1640s, leading to the abolition of the monarchy in England for over a decade.[10] When Charles II ascended to the throne in the restoration of the monarchy in 1660, one of his first acts as monarch was to punish those responsible for his father's execution. To this end, he negotiated a number of treaties with foreign states, including the treaty with Denmark, requiring the government of Denmark to give up regicides. These types of treaties, regarding the surrender of enemies to the sovereign, might properly be understood as gestures of friendship between allies, methods for establishing or maintaining peaceful relationships between countries. They also demonstrated a preeminent concern with maintaining the status quo among reigning heads of state. With time, however, the scope of extradition law and its perceived functions widened.

Extradition treaties proliferated, and the substance of those treaties came to include a greater variety of crimes and criminals.

Beginning in the eighteenth century, it became common practice for extradition treaties to specify deserting troops as extraditable criminals.[11] In Europe which was

[8] M. Cherif Bassiouni, *International Extradition: United States Law and Practice* 5 (2007); 1 Lassa Oppenheim, *International Law* 696, 704 (1955).

[9] In 314 B.C., for example, the city of Sora (located in modern-day Lazio) rose up and slaughtered a group of Roman colonists. At this time, the Roman Republic was still fighting the resilient Samnite tribes for control of the Italian Peninsula and was thus particularly sensitive to rebellions. In response to the massacre, Roman soldiers attacked the city and requested extradition of the ringleaders of the massacre. The citizens of Sora identified and handed over 225 of the participants in the massacre. These ringleaders were then sent to Rome, where they were flogged and beheaded in the Forum, "to the vast delight of the common people."

[10] Rebecca Fraser, *The Story of Britain: From The Romans to the Pent: A Narrative History* 327–77 (2005).

[11] A 1788 Treaty between the United States and France, for example, dealt specifically with the extradition of deserting sailors, a major issue at a time when conditions in the navy were compared unfavorably with jail. *Boswell's Journal of a Tour to the Hebrides with Samuel Johnson, Ll.D. 247 (R.W. Chapman Ed., 1924).*

driven by dynastic rivalries and interminable conflicts, military desertion was a major problem for armies, and therefore, during the eighteenth and nineteenth centuries, extradition treaties were chiefly concerned with military offenders.

By the nineteenth century, the modern conception of extradition began to take shape. Whereas previously extradition had focused on narrow categories of offenders - political enemies, leaders of rebellions, military deserters - nineteenth-century extradition treaties covered a wide variety of common crimes.[12] The Treaty of Amiens, for example, concluded between Great Britain and France in 1802, provided for the extradition of individuals accused of "murder, forgery or fraudulent bankruptcy." This was a very different kind of treaty from previous ones, for it dealt with the problem of regular crimes and torts rather than political offenses.[13]

Gradually, this new conception of the role of extradition took hold in international treaties. Formal procedures were established for extradition requests. Reciprocity of obligations was imposed on the parties. Requesting states were required to state the grounds for extradition and to justify them under the relevant treaty. Treaties set out extraditable crimes and often included a list of non extraditable crimes. Extradition finally emerged as a decidedly "legal" phenomenon. Concomitant with the rise of "legal"

[12] Of course, some extradition treaties before the nineteenth century did deal with common criminals. Christopher L. Blakesley, 'The Practice of Extradition from Antiquity to Modern France and the United States: A Brief History', 4 B.C. *INT'L & COMP. L. REV.* 39, 48 (1981).

[13] The work of Cesare Beccaria, the renowned Italian philosopher and penologist, certainly played an important role in this development. Beccaria was interested in reforming the criminal law system in order to make it both more effective and more just. His treatise, *Crimes and Punishments*, published in 1764, argued that the death penalty should be abolished, torture prohibited, and dueling strictly punished. In his pursuit of a criminal justice system inspired by reason, Beccaria took a keen interest in the spread of extradition treaties, for he believed they might serve an important role in disincentivizing crime. As he stated, "the conviction of finding nowhere a span of earth where real crimes were pardoned might be the most efficacious way of preventing their occurrence." Cesare
Beccaria, An Essay on Crimes and Punishment 46 (4th Ed. 1775); Crimes and punishments including a New Translation of Beccaria's *Dei Delitti E Delle Penne* 193–94 (J.A. Farrer trans., London, Chatto & Windus 1880) [hereinafter Crimes and Punishments]. At the same time, he worried that extradition, if not implemented justly, might lead to oppression. Thus, he wrote, I shall not pretend to determine this question [whether nations should extradite criminals], until laws more conformable to the necessities and rights of humanity, and until milder punishments, and the abolition of the arbitrary power of opinion, shall afford security to virtue and innocence when oppressed; and until tyranny shall be confined to the plains of Asia, and Europe acknowledges the universal empire of reason, by which the interests of sovereigns, and subjects, are best united.
This worry about the injustices of extradition gained increasing acceptance in the nineteenth century and eventually led to an exception in extradition treaties excluding political offenders from extradition in order to prevent the very kind of political vengeance that defined ancient extradition practice. Crimes And Punishments.

extradition came the new emphasis on courts. National courts were regularly called upon to decide the legality of extraditions, and they quickly developed a considerable jurisprudence in the area.

By the late 1800s, bilateral extradition treaties began to proliferate. One of the most striking occurrences in the history of extradition is that whereas extradition began as a political phenomenon that largely excluded common crimes, by the nineteenth century, the situation flip-flopped. Extradition became an issue of criminal administration of justice that largely excluded political crimes. This change is due to the impact of two revolutions, one ideological and the other material. The rise of democracy coincided with a widespread acceptance of the political offense exception. Common crimes, on the other hand, went from being largely exempt from extradition to being the main focus of extradition treaties. This development was connected inextricably with the Industrial Revolution. As a consequence of the new technologies due to industrial revolution or vice versa, states began to understand that because of the development of new, better, and quicker forms of transportation criminals enjoy greater ability to commit crimes over a larger region. and therefore began to accept that it was in their common interest to surrender ordinary criminals regularly to each other. Hence, extradition treaties began to specify common crimes as a subject matter of extradition.

Since Second World War, states have increasingly opted to enter into multilateral, rather than bilateral, extradition treaties. While bilateral treaties are still by far the most common of extradition arrangements, a number of states that share geographic and political similarities have entered into additional, supplemental, or superseding multilateral regional agreements. Many international and regional agreements that aim at controlling the targeted crimes began to contain the obligation to extradite the concerned offenders.

Another noteworthy development which added a new dimension to extradition law is the growing international allegiance to human rights ideology. Whereas for a long time the nature of offence or interests of sovereign states alone remained in focus, the new thrust on human rights ideology successfully brought into focus even the interests of the concerned fugitive criminal. Until recently, the rule of respect for sovereignty

prevented the judiciary and the executive considering the extradition request prevented from inquiring into the fairness of the requesting nation's justice system.[14] The rule of non inquiry, born out of concern for courtesy and friendship between governments has given way to a new concern for the rights of individuals. As a result the possibility of violation of most fundamental rights like right to life and freedom from torture of the fugitive criminal became a weighty factor in the decision over the request for extradition.

The historical evolution of the practice of extradition expressly demonstrates that extradition in earlier times was used for preservation of political and religious interest of the states but gradually it evolved into an international cooperation for the preservation of the world's social interests and suppression of crimes. This common interest of states, in the suppression and prevention of crime, coupled with the increasing recognition of basic principles which gradually softened the exaggerated feeling of national sovereignty unfettered by law and the emergence of humanitarian international law giving gull protection to individual rights and interest, has paved the way for a true international law on **e**xtradition**.**

SIGNIFICANCE OF THE STUDY:

International and national security rests a lot on effective administration of criminal justice. In a politically divided world states inevitably encounter sovereign barriers to extend their individual arms of criminal justice mechanism beyond their national boundaries. As a result, the unavailability of the offender (accused or guilty) within the national boundaries is obviously a major setback to the victim state which is eager to put into motion its criminal justice mechanism in respect of him. Whenever such offender flees to another country to make himself beyond the reach of criminal justice administration of a given state, extradition provides the legal avenue for the affected state to get back the fugitive criminal and subject him to its administration of criminal justice. Extradition is thus an enabling process that comes to the rescue of a politically disabled state due to sovereign barriers. Therefore, extradition is a very crucial legal mechanism in

[14] Matthew Murchison, 'Extradition's Paradox: Duty, Discretion, and Rights in the World of Non- Inquiry', *43 STAN. J. INT'L L. 295 (2007)*;

facilitating effective administration of criminal justice of a given state in spite of the political barriers it encounters.

Extradition serves dual purpose. It caters to the needs as well as powers of the politically independent states. Thus as much as its working depends on the consent of the requested stat, extradition meets the expectations of sovereign authority. As much as it facilitates the requesting state to gain the subjection of the fugitive criminal to its justice mechanism, extradition caters to its needs.

Extradition is the legal medium of state cooperation most required for ensuring criminal justice mechanism, the effectiveness of which decides the prospects of both national as well as international security. Not surprisingly, it gained enhanced importance in the contemporary world which is currently struggling to match with the pace and scale of criminal activities across the world. Presently, the breadth and width of criminal activities around the world grew immensely because of technological advancements. In the current era serious crimes like terrorism, drug trafficking, economic offences of high magnitude are threatening national as well as international security. In view of the devastating consequences of these crimes throwing serious challenges to the individual and collective security of international community, extradition as a tool of state cooperation for tackling the crimes across the world has but acquired extraordinary significance. So much so, international instruments designed to tackle serious crimes like drug trafficking have themselves began to constitute the legal basis for conceding to extradition requests.

At individual level India has many important stakes in the effective working of the legal institution of extradition. It is experiencing like all other countries the trouble of having to deal with the increasing incidence of technologically sophisticated crimes and criminals' ability to flee. Additionally, India is also one of the special targets of terroristic attacks and other serious crimes like drug trafficking. Its people are also victims of large scale economic offences. Therefore, India would be keenly interested in gaining positive responses to its requests for extradition of fugitive criminals. On the other side of it, as a responsible member of international community, particularly like every other country which understands the importance and usefulness of international comity and reciprocity,

India needs to assign due importance to allow extradition of fugitive criminals to other requesting states by having a municipal system in place to facilitate the same.

The legal institution of extradition underwent many evolutionary changes with passage of time. Like many other legal concepts, extradition too has of late acquired human rights oriented approach obviously because of the profound influence of human rights ideology. To everybody's knowledge the enjoyment of human rights rests a lot on the justice mechanism of a given country and extradition connects the fugitive criminal to the justice mechanism of the requesting state. Therefore, the human right situation of the requesting state became a subject matter of consideration in evaluation of the extradition request. Practices of imposition of capital punishment and infliction of torture in the receiving state particularly became weighty considerations at international level for rejecting extradition requests.

In the light of above observations, the present study on '**Changing Dimensions of Extradition – A Study with special reference to Law, Practice and Experiences of India'** assumes fundamental significance because of the fact that extradition is a very important legal mechanism to effectively deal with crimes and criminals which in turn is very crucial for ensuring international as well as national security. Its enhanced significance in the light of the alarming growth of technically advanced criminal activities with global ramifications raises much higher the quotient of significance of the area of study. The changing dynamics of extradition with its new dimension of individual orientation bringing in the dilemma of State Vs Individual Interests further fortifies the need for academic indulgence in this topic of contemporary importance.

Taking into consideration that very limited work is found in India on the subject of extradition especially with special focus on contemporary dynamics this work is undertaken to explore the existing and evolving legal parameters of the vital institution of extradition on the same. Further the attempt made at assessing the impact of human right dimensions of extradition on Indian Law and Practice and the impact of human rights ideology with particular reference to prohibition of torture on the prospects of Indian

requests for extradition of criminals accused of serious crime is hoped to make a distinct academic contribution.

SCOPE AND LIMITATIONS

To give a broad overview of the scope of this work, this study focuses on the importance, the essential features and other legal parameters of the legal mechanism of extradition, the general scope and the changing dynamics of the law of extradition at international level, the scope and status of Indian legislative framework of extradition, the judicial approach to extradition issues in practice, the compatibility of Indian legislative framework with general developments in extradition law and UN Model Law, 2004, the impact of human rights ideology on the legal institution of extradition and the Indian experiences due to the emerging human right approaches to extradition.

This study is limited to analysis of Indian Legal Regime as contained in Indian Extradition Act, 1962 as amended in 1993 along with the relevant judicial dicta. Extradition Treaties concluded by India are excluded from the study. Also in assessing the impact of Human Rights Ideology on the institution of extradition, greater thrust is made on the impact of human right of prohibition against torture.

OBJECTIVES OF THE STUDY:

- To analyze the importance , basic principles and other legal parameters of the concept of extradition
- To assay out the changing dynamics of extradition with special reference to contemporary developments.
- To explore t the influence of human rights ideology on the legal institution of extradition
- To understand the features of Indian legal regime relating to extradition and also assess its compatibility with generally accepted principles and process of extradition and also with the UN Model Law of Extradition, 2004.
- To assess the impact of human rights ideology, particularly with reference to torture, on the prospects of extradition to India .

- To assess the adequacy of the proposed Bill on Prevention of Torture, 2010 in overcoming the profile of torture situation in India operating as a barrier to extradition to India.

HYPOTHESIS:

1. The institution of extradition while retaining the basic purpose has undergone substantial changes.

2. Indian extradition law is premised on the generally followed basic principles and procedures relating to extradition. It is also largely in tune with UN Model Law of Extradition, 2004.

3. Human rights ideology, particularly with reference to prohibition against death penalty and against torture has gained significant space in the law of extradition.

4. Torture scenario in India has an adverse impact on the prospects of extradition to India.

5. The proposed Bill on Prevention of Torture, 2010 as revised in 2011 while a positive beginning is not adequate to overcome resistance to requests for extradition to India.

RESEARCH METHODOLOGY:

It is doctrinal study employing descriptive, exploratory and comparative methods of research.

SOURCES OF DATA:

Primary sources include Indian Extradition Act, 1962 as amended in 1993, Judicial Decisions, UN Model Treaty, 1994, UN Model Law, 2004, various international instruments like Universal Declaration of Human Rights, 1948, International Convention Covenant on Civil and Political Rights, 1996, European Convention on Human Rights, 1950, American Convention on Human Rights,1969 UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, 1984(CAT), European Convention on Extradition, 1957, , the European Convention on Simplified Extradition Procedure, 1995, EU Framework Decision, 2004,

Secondary sources include books, journals, newspapers, web sources

SCHEME OF THE WORK:

This work is divided into Seven Chapters

Chapter – I	**:**	Introduction.
Chapter – II	**:**	Significance and Legal Parameters of the Concept of Extradition.
Chapter – III	**:**	Evolution of Indian Law of Extradition.
Chapter – 1V	**:**	Indian Extradition Law and Practice-An Analysis.
Chapter – V	**:**	Human Rights Ideology and Extradition.
Chapter – VI	**:**	Proliferation of Serious Crimes & Human Right Barriers to Extradition - Implications, Experiences and Responses of India.
Chapter – VII	**:**	Conclusion & Suggestions.